

Brian J. Benison
Associate Director
Federal Regulatory

ORIGINAL

SBC Telecommunications, Inc.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005
Phone 202 326-8847
Fax 202 408-4809
Email: bbeniso@corp.sbc.com



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 25, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325-Lobby
Washington, DC 20554

RE: Ex Parte Presentation, CC Docket No. 96-98 (Implementation of the
Local Competition Provisions of the Telecommunications Act of 1996)

Dear Ms. Salas:

On May 25, 2001, Gary Phillips, Jeff Brueggerman and the undersigned, representing SBC Communications, Inc. (SBC), met with Jonathan Reel, Attorney Advisor, and Michelle Carey, Chief, of the Policy and Program Planning Division of the Common Carrier Bureau.

The purpose of the meeting was to discuss issues associated with unbundled local switching. The attached outline was used as a basis for the discussion. Please contact me at (202) 326-8847 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "B. J. Benison".

CC: Michelle Carey
Jonathan Reel

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UNE Remand Reconsideration Proceeding – Unbundled Local Switching
SBC Communications Inc.
May 24, 2001

- SBC continues to support the elimination of unbundled local switching in MSAs in the top 100 nationally for all business customers.
- SBC would not oppose a wire center-based test, but if the FCC adopts a wire-center-by-wire center approach, there would be no need for additional customer-based distinctions. When a CLEC uses its own switch to serve customers in a particular wire center, it will seek to serve as many customers as possible in that wire center with that switch in order to more quickly recover its fixed costs.
 - If the FCC adopts a wire center-based approach, it might consider alternative tests for eliminating the unbundled local switching requirement in a wire center. For example, the Commission could eliminate the unbundled local switching requirement in wire centers: (1) with a certain number of business lines or a certain number of total lines; or (2) with collocation and a certain number of NXX assignments to the rate center in which the wire center is located.
- The McLeod proposal is not credible
 - The Commission could not possibly conclude that CLECs are impaired in their ability to serve customers without ULS unless they serve 40% of the physical loops in a wire center with their own switches.
 - A 40% market share test would be too strict even as a test for non-dominant status – and the test for non-dominance must necessarily be stricter than the impairment test.
 - While a low market share may signify non-dominant status, the Commission has long recognized that the converse is not true: that is, a high market share, in and of itself, does not demonstrate dominant status.¹

¹ See, e.g., *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880 (1991) at ¶ 51 (“market share alone is not necessarily a reliable measure of competition, particularly in markets with high supply and demand elasticities”); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995) at ¶ 68 (rejecting argument that AT&T’s 60% market share show dominance in the interexchange marketplace). See also *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, FCC 96-209, released 5/14/96 (finding AT&T non-dominant in provision of IMTS despite average market share of 74% in 76 countries)

- Thus wholly apart from the fact that a 60% market share is not particularly high, a 60% market share – indeed, an 80% market share – could not be a basis for a finding of dominance, let alone impairment.
- Moreover, the market share test McLeod proposes is not really a 40% market share test at all.
 - On a national level, CLECs provide 35.5% of their own end user customer lines. (See *Local Telephone Competition: Status as of December 31, 2000*, Industry Analysis Division, CCB, May 2001) Undoubtedly, in major metropolitan areas, the percentage is much higher. ILECs have no way of tracking the number of CLEC self-provisioned lines on a wire center basis. Thus, the only way McLeod's proposal could be implemented is to systematically ignore more than 1/3 of all CLEC lines.
 - McLeod also would count a DS-1 as a single loop.
- CLECs Who Advocate the UNE-P Continue to Distort the Facts.
 - Compare CompTel May 11, 2001 *ex parte* (claiming that Verizon's market share is 94% and that during the year 2000, CLECs gained only 2.3 points in market share) with May 2001 *Local Competition Report*, which showed that:
 - CLEC market share grew 93% - from 4.4% to 8.5% - during the year 2000
 - On a national level, CLECs already have won more than 20% of all medium and large business lines. (Note: the CLECs also have won well over 20% of all small business lines in the SBC region)
 - CLECs serve more lines via resale than the UNE-P.
 - At least one CLEC is serving customers in zip codes accounting for 88% of the nation's population.
- 4 out of 5 new business lines in SBC territory are going to CLECs.